- ***THE HON'BLE SRI JUSTICE P.S.NARAYANA**

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+ WRIT PETITION NO.12962 OF 1997

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% Dated 29-12-2004

D.China Mallaiah S/O Sri Ilaiah, R/O Mulakanur (V), Bhimadevarapally (M), Karimnagar District and others.

Petitioners

VERSUS

$ District Registrar,The Karimnagar District Co.operative Central Bank Limited, Karimnagar and others.

Respondents

! Counsel for petitioners : Mr.A.Satyanarayana Reddy.

^ Counsel for Respondents: Mr.P.M.Gopal Rao

< GIST:

> HEAD NOTE:

? Cases referred

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No.12962 of 1997

Between:

1 D. China Mallaiah, s/o Sri Ilaiah,
R/o Mulkanur (V), Bhimadevarapally (M),

Karimnagar Dist.
2 D. Bapanna, S/o Ilaiah
R/o Mulkanur (V), Bhimadevarapally (M),
Karimnagar Dist.
3 D. Chinavenkata Rajan, S/o Ilaiah
R/o Mulkanur (V), Bhimadevarapally (M),
Karimnagar Dist.
4 D. Erra Mallaiah, S/o Pedda Ilaiah,
R/o Mulkanur (V), Bhimadevarapally (M),
Karimnagar Dist.
5 D. Komaraiah, s/o Erra Mallaiah,
R/o Mulkanur (V), Bhimadevarapally (M),
Karimnagar Dist.
6 Chelupuri China Komaraiah, (Died) s/o Ilaiah Rep. by his Son
Chelupuri Ilaiah R/o Mulkanur (V), Bhimadevarapally (M),
Karimnagar Dist.

.....PETITIONERS

AND

1 District Registrar,
The Karimnagar Dist Co.operative Central Bank Ltd.,
Karimnagar.
2 Branch Manager,
The Co.operative Agricultural Development Bank Ltd.,
Huzarabad, Karimnagar Dist.
3 The Co-operative Sub Reistrar/ Arbitratior & Executive No.I
The Karimnagar District Co-opeative Central Bank Ltd.,
Karimnagar.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in the nature of a writ of Mandamus declaring the action of the respondents in insisting for the repayment of petitioners loan amounts taken from the second respondent Bank in the financial year 1984-95 as highly arbitrary and illegal and they may be further directed not to insist for the repayment said loan here after.

Counsel for the Petitioners: MR.A.SATYANARAYANA REDDY

Counsel for the Respondents: MR.P.M.GOPALA RAO

The Court made the following :

ORDER:

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Heard Sri A.Sathyanarayana Reddy, learned counsel representing the writ petitioners and Sri V.Gopal Rao, learned counsel representing the respondents.

Sri Sathyanarayana Reddy, learned counsel representing the writ petitioners would contend that as per the Government policy and the official instructions, loans obtained by the petitioners-farmers are exempted to an extent of Rs.10,000/-. Learned counsel also would submit that despite the policy of the Central Government, all of a sudden the respondents 2 and 3 without any notice, had been regularly visiting the house of the petitioners with subordinates and were threatening the petitioners to repay the loans, otherwise they would attach the movable properties of the petitioners and such acts are not authorized by law.

On the contrary, Sri.Gopal Rao, learned Standing Counsel representing the respondents had taken this Court through the averments made in the counter-affidavit and would submit that in view of the fact that already a certificate had been issued under Section 71 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short “the Act”), the petitioners are having a remedy by way of an appeal under Section 76 of the Act and without availing the same the present writ petition had been filed without any justification, whatsoever.

The petitioners filed the present writ petition for a writ or order or direction more particularly in the nature of writ of Mandamus declaring the action of the respondents in insisting for the repayment of the loan amount taken by the petitioners from the second respondent Bank in the financial year 1984-85 as highly arbitrary and illegal and for further direction not to insist for repayment of the said loan hereafter and pass suitable orders.

It is stated that the petitioners had obtained long term loan from the Society for the development of agricultural lands in the financial year 1984-85. It is further stated that in the year 1987 the then Deputy Prime Minister had announced a Government policy and issued official instructions that the loans obtained by the farmers to an extent of Rs.10,000/- will be exempted from repayment. It is also stated that the

respondents had not taken any steps subsequent thereto. But, all of a sudden in the year 1997 there were threats of attachment of movable properties of the petitioners and it is stated that such acts are illegal and unauthorized by law. It is also stated that the third respondent had made the orders without following the procedure specified under Section 71 of the Act specified supra and in the said circumstances, this writ petition was filed.

Respondents filed counter-affidavit denying the allegations. It is stated that the petitioners are chronic defaulters and they failed to pay the instalments regularly. Hence the second respondent was forced to file an application under Section 71 of the Act before the third respondent and the third respondent issued notices to the petitioners by fixing a particular date of hearing requesting them to appear on the date of hearing and file their objections. The petitioners, having received and having knowledge about the notices, failed to file the objections or to appear on the date of hearing. Hence the third respondent issued certificate under Section 71 of the Act. It is also specifically stated that it is true that the Government of India announced a debt relief scheme in the year 1989 whereunder an amount of Rs.10,000/- was waived for the loan outstanding as on 02.10.1989 with certain conditions. It is submitted that the respondents extended the benefit of the scheme as per the norms fixed to the petitioners as shown in the annexure and hence, the allegations to the contra are untenable. Further specific stand was taken that the petitioners are having an effective alternative remedy by way of appeal under Section 76 of the Act to the Andhra Pradesh Co-operative Tribunal and hence, on this ground too the writ petition is liable to be dismissed.

The factual matrix already had been narrated above. Section 71 of the Act which deals with the recovery of debts, reads as hereunder:

> **"Recovery of debts**:- (1) Notwithstanding anything in this Act or in any other law for the time being in force and without prejudice to any other mode of recovery which is being taken or may be taken, the Registrar may, (on the application made by a society or financing bank or federal society as the case may be, for the recovery of arrears of any sum advanced to any of its members and on furnishing a statement) of accounts in respect of the arrears and after making such inquiry as he deems fit issue a certificate for the recovery of the amount stated therein to be due as arrears.
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> (2) Where the Registrar is satisfied that (a society) has failed to take action

under sub-section (1) in respect of any amount due as arrears, he may on his own motion, and after making such enquiry as he deems fit, issue a certificate for the recovery of the amount stated therein to be due as arrears and such a certificate shall be deemed to have been issued on an application made by the society concerned.

(3) A certificate issued by the Registrar under sub-section (1) or sub-section (2) shall be final and conclusive proof of the arrears stated to be due therein and the certificate shall be executed in the manner specified in sub-section (2) of Section 70)."

Section 76 of the Act,which deals with the appeals, reads as hereunder:

"**Appeal**:- (1) Any person or society aggrieved by any decision passed or order made under Section 6, Section 9A, Section 9B, Section 9C, Section 12A, Section 13, Section 15A, Section 16, Section 17, Section 19, Section 21, Section 21A, Section 21AA, Section 23, Sub-section (3) of Section 32, Section 34, Section 34A, Section 60, Section 62, Section 64, Section 66, Section 70, Section 71, Section 73, and Section 117 may appeal to the Tribunal:

Provided that nothing in this sub-section shall apply to any order of withdrawal or transfer of a dispute under sub-section (3) of Section 62.

(2) On a reference made by the Registrar of Co-operative

Societies, the Tribunal shall call for and examine the records of any proceeding which is appealable to it for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and where it appears to the Tribunal that any such decision or order should be modified, annulled or reversed, the Tribunal may pass such order thereon as it may deem fit:

(3) Any appeal under sub-section (1) shall, subject to the other provisions of this Act, be preferred within sixty days from the date of communication to the appellant of the decision, refusal or order complained of but the Tribunal may admit an appeal preferred after the said period of sixty days, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within the said period.

(4) In disposing of an appeal under this Section, the Tribunal may, after giving the parties an opportunity of making their representations, pass such order thereon as it may deem fit.

(5) The decision or order of the Tribunal on appeal shall be final.

(6) The Tribunal may pass such interim orders pending the decision on the appeal as may deem fit.

(7) The Tribunal may award costs in any proceedings before that authority to be

paid either out of the funds of the society or by such party to the appeal as the Tribunal may deem fit."

Even as per the averments made in the affidavit filed in support of the writ petition it is clear that orders had been passed under Section 71 of the Act. Specific stand was taken by the respondents in the counter-affidavit that as against the said orders, remedy of appeal is provided for under the Act. No doubt the stand taken by the writ petitioners is that the orders were made without following the procedure as specified under Section 71 of the Act. It is not the case of the writ petitioners that the orders made are totally by an incompetent authority or the authority who made the orders lacks the jurisdiction to make such orders. When that being so, when an effective remedy by way of appeal is provided for under Section 76 of the Act, there is no justification on the part of the writ petitioners to approach this Court straight away by invoking the extra-ordinary jurisdiction under Article 226 of the Constitution of India without availing the alternative remedy by way of appeal. In view of the same, the other factual details, which had been narrated in the affidavit filed in support of the writ petition and also the stand taken by the respondents in the counter-affidavit need not be adverted to in elaboration.

Hence, liberty is given to the writ petitioners to prefer appeals under Section 76 of the Act if they are so advised within a period of one month from today. Except making this observation, no other relief can be granted in the present writ petition.

The writ petition is accordingly disposed of. No order as to costs.

29-12-2004 P.S.NARAYANA, J

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To

1 District Registrar,
The Karimnagar Dist Co.operative Central Bank Ltd.,
Karimnagar.
2 Branch Manager,
The Co.operative Agricultural Development Bank Ltd.,
Huzarabad, Karimnagar Dist.
3 The Co-operative Sub Reistrar/ Arbitratior & Executive No.I
The Karimnagar District Co-opeative Central Bank Ltd.,
Karimnagar.

4 Two L.R. copies.

5 The Under Secretary, Union of India, Ministry of Law,
Justice and Company Affairs, New Delhi.

6 The Secretary, A.P. Advocates' Association Library, High
Court Buildings, Hyderabad.

7 Two C.D.copies.